



United States
General Accounting Office
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Office of the General Counsel

B-279001

January 27, 1998

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Federal Communications Commission: Competitive Bidding Procedures

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Competitive Bidding Procedures" (WT Docket No. 97-82; ET Docket No. 94-32; FCC 97-413). We received the rule on January 9, 1998. It was published in the Federal Register as a final rule on January 15, 1998. 63 Fed. Reg. 2315.

The final rule adopts uniform competitive bidding rules for all future auctions, which simplify and streamline FCC regulations in order to increase the overall efficiency of the competitive bidding process. The rule and the procedures therein are applicable to the FCC's spectrum auction program.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation

work relating to the Federal Communications Commission is John Anderson, Director of Transportation Issues. Mr. Anderson can be reached at (202) 512-2834.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Kathleen Fagan
AMD-Performance Evaluation and
Records Management
Federal Communications Commission

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE FEDERAL COMMUNICATIONS COMMISSION
ENTITLED
"COMPETITIVE BIDDING PROCEDURES"
(WT Docket No. 97-82; ET Docket No. 94-32; FCC 97-413)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC prepared both an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in connection with the proposed rulemaking and the final rule, respectively.

The analyses describe the reason for the rule and the legal basis for it. They also include descriptions of the number of small entities affected by the rule; discussions of the recordkeeping, reporting, and other compliance requirements; and the steps taken to minimize the burdens on small entities.

The final rule eliminates installment payments in the auction of the lower 80 and General Category channels in the 800 MHz Specialized Mobile Radio service. The Balanced Budget Act of 1997 requires that all proceeds from auctions be deposited in the U.S. Treasury by September 30, 2002. However, the FCC points out that installment payments are not the only tool available to assist small entities and that the final rule provides for higher bidding credits, in lieu of installment payments.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. § 553. On March 21, 1997, the FCC published a notice of proposed rulemaking in the Federal Register. 62 Fed. Reg. 13570. Twenty-four comments and 19 reply comments were received in response to the notice and the FCC responds to the comments and discusses the changes made to the proposed rule as a result of consideration of the comments.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains a revised information collection requirement which is subject to approval by the Office of Management and Budget (OMB). The preamble to the final rule sets forth the information required by the act, including the need and use of the information, the estimated number of respondents, and the annual burden hours imposed.

The information collection is entitled Auction Forms and License Transfer Disclosures. The previously approved collection involved 44,000 respondents and a total annual burden hour estimate of 773,000 at a cost of \$46,347,350. The additional requirements will not increase the number of respondents but increase the burden hours by 8,500 and the cost by \$612,650.

The FCC has requested emergency approval by OMB of the revised collection by March 2, 1998, and will accept comments on the collection until February 25, 1998.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority contained in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended. 47 U.S.C. §§ 154(i), 155(b), 155(c)(1), 303(r), and 309(j).

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.